

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

DAVID JOSEPH LECHIARA,

Petitioner,

v.

**Civil Action No. 1:07cv14
Criminal Action No. 1:05cr39(1)
(Judge Keeley)**

UNITED STATES OF AMERICA,

Respondent.

ORDER DENYING MOTION TO APPOINT COUNSEL

This case is before the Court on the petitioner's Motion for Appointment of Counsel. In support of the motion, the petitioner asserts that he is a pauper, without transportation to a law library, and unfamiliar with courtroom procedure.

There is no Constitutional right to have appointed counsel in a § 2255 proceeding. Pennsylvania v. Finley, 481 U.S. 551, 555 (1987). "[T]he right to appointed counsel extends to the first appeal of right and no further." Id. Nonetheless, the Rules Governing Section 2255 Proceedings for the United States District Court require that counsel be appointed in certain circumstances, such as upon a determination that an evidentiary hearing is required or to financially eligible defendants if necessary for effective discovery. See Rule 6(a) and 8(c).

Being that none of those factors have yet occurred here,¹ and the undersigned believes that

¹ This case was initiated on February 2, 2007. On February 7th, the undersigned conducted a preliminary review of the file and determined that summary dismissal was not warranted at that time. The respondent was therefore directed to file a response to the petition. A response was filed on July 6, 2007. The petitioner has not yet filed a reply. Whether discovery or an evidentiary hearing will be necessary cannot be determined until such time as the case is fully briefed. Thus, it is premature to consider the need for appointed counsel at this time.

the petitioner is able to adequately present his claims without the assistance of counsel at this time, the petitioner's Motion for Appointment of Counsel (dckt. 17/96) is **DENIED**.

IT IS SO ORDERED.

The Clerk is directed to mail a copy of this Order to the *pro se* petitioner and to transmit a copy of this Order to counsel of record as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia..

DATED: October 11, 2007.

/s John S. Kaull

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE